

AMENDED IN ASSEMBLY AUGUST 18, 2016

AMENDED IN ASSEMBLY AUGUST 3, 2016

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN ASSEMBLY MAY 23, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 215

Introduced by Senators Leno and Hueso

February 12, 2015

An act to amend Sections 309.6, 1701.1, 1701.2, 1701.3, 1701.4, and 1701.5 of, and to add Sections 1701.6 and 1701.7 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 215, as amended, Leno. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature. Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, when appropriate. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on the disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified for bias or prejudice based on specified criteria. The bill would prohibit commission procedures from authorizing a commissioner or administrative law judge to rule on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(2) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, adjudication, or ratesetting hearing. Existing law regulates communications in matters before the commission and defines an “ex parte communication” as any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law requires the commission, by regulation, to adopt and publish any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication and ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions.

This bill would recast the laws relating to ex parte communications in regard to commission proceedings.

(3) The Political Reform Act of 1974 (PRA) provides for the regulation of the lobbying industry, including defining the term “lobbyist” and regulating the conduct of lobbyists.

This bill would state that it is the intent of the Legislature that the commission, and any entity or person seeking to influence actions taken by the commission, be subject to all applicable ethical standards, including any applicable obligations under the PRA, including applicable lobbying obligations.

(4) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 309.6 of the Public Utilities Code is
2 amended to read:

3 309.6. (a) The commission shall adopt procedures on the
4 disqualification of commissioners and administrative law judges
5 due to bias or prejudice similar to those of other state agencies and
6 superior courts.

7 (b) (1) For ratesetting and adjudicatory proceedings, a
8 commissioner or administrative law judge shall be disqualified for
9 bias or prejudice based on either of the following:

10 (A) Actions taken during the proceeding that demonstrate bias
11 or prejudice.

12 (B) Actions taken outside the public record of a proceeding
13 demonstrating any commitment to provide relief to a party.

14 (2) Past work experience by the commissioner or administrative
15 law judge shall not be a sufficient basis for demonstrating bias or
16 prejudice pursuant to paragraph (1).

17 (c) The commission procedures shall not authorize a
18 commissioner or administrative law judge to rule on a motion
19 made by a party to a proceeding to disqualify the commissioner
20 or administrative law judge due to bias or prejudice.

21 (d) The commission shall develop the procedures with the
22 opportunity for public review and comment.

23 SEC. 2. Section 1701.1 of the Public Utilities Code is amended
24 to read:

25 1701.1. (a) The commission shall determine whether each
26 proceeding is a quasi-legislative, an adjudication, or a ratesetting

1 proceeding and, consistent with due process, public policy, and
2 statutory requirements, determine whether the proceeding requires
3 a hearing. The commission's decision as to the nature of the
4 proceeding shall be subject to a request for rehearing within 10
5 days of the date of that decision or of any subsequent ruling that
6 expands the scope of the proceeding. Only those parties who have
7 requested a rehearing within that time period shall subsequently
8 have standing for judicial review and that review shall only be
9 available at the conclusion of the proceeding. The commission
10 shall render its decision regarding the rehearing within 30 days.
11 The commission shall establish rules regarding ex parte
12 communication on case categorization issues.

13 (b) The commission, upon initiating an adjudication proceeding
14 or ratesetting proceeding, shall assign one or more commissioners
15 to oversee the case and an administrative law judge when
16 appropriate. The assigned commissioner shall schedule a prehearing
17 conference. The assigned commissioner shall prepare and issue
18 by order or ruling a scoping memo that describes the issues to be
19 considered and the applicable timetable for resolution. The
20 administrative law judge shall either preside over and conduct, or
21 assist the assigned commissioner or commissioners in presiding
22 over and conducting, any evidentiary or adjudication hearing that
23 may be required.

24 (c) The commission, upon initiating a quasi-legislative
25 proceeding, shall assign one or more commissioners to oversee
26 the case and an administrative law judge, when appropriate, who
27 may be assisted by a technical advisory staff member in conducting
28 the proceeding. The assigned commissioner shall prepare and issue
29 by order or ruling a scoping memo that describes the issues to be
30 considered and the applicable timetable for resolution.

31 (d) (1) Quasi-legislative cases, for purposes of this article, are
32 cases that establish policy, including, but not limited to,
33 rulemakings and investigations that may establish rules affecting
34 an entire industry.

35 (2) Adjudication cases, for purposes of this article, are
36 enforcement cases and complaints except those challenging the
37 reasonableness of any rates or charges as specified in Section 1702.

38 (3) Ratesetting cases, for purposes of this article, are cases in
39 which rates are established for a specific company, including, but

1 not limited to, general rate cases, performance-based ratemaking,
2 and other ratesetting mechanisms.

3 (e) (1) (A) “Ex parte communication,” for purposes of this
4 article, means any oral or written communication between a
5 decisionmaker and an interested person concerning any matter
6 before the commission that the commission has not specified in
7 its Rules of Practice and Procedure as being a procedural matter
8 and that does not occur in a public hearing, workshop, or other
9 public proceeding, or on the official record of the proceeding on
10 the matter. The commission shall specify in its Rules of Practice
11 and Procedure, enacted by rulemaking, the types of issues
12 considered procedural matters under this article.

13 (B) “Interested person,” for purposes of this article, means any
14 of the following:

15 (i) Any applicant, an agent or an employee of the applicant, or
16 a person receiving consideration for representing the applicant, or
17 a participant in the proceeding on any matter before the
18 commission.

19 (ii) Any person with a financial interest, as described in Article
20 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
21 Government Code, in a matter before the commission, an agent
22 or employee of the person with a financial interest, or a person
23 receiving consideration for representing the person with a financial
24 interest. A person involved in issuing credit ratings or advising
25 entities or persons who invest in the shares or operations of any
26 party to a proceeding is a person with a financial interest.

27 (iii) A representative acting on behalf of any civic,
28 environmental, neighborhood, business, labor, trade, or similar
29 organization who intends to influence the decision of a commission
30 member on a matter before the commission.

31 (iv) Other categories of individuals deemed by the commission,
32 by rule, to be an interested person.

33 (2) The commission shall by rule adopt and publish a definition
34 of decisionmakers and interested persons for purposes of this
35 article, along with any requirements for written reporting of ex
36 parte communications and appropriate sanctions for noncompliance
37 with any rule proscribing ex parte communications. The definition
38 of decisionmakers shall include, but is not limited to: each
39 commissioner; the personal staff of a commissioner if the staff is
40 acting in a policy or legal advisory capacity; the chief

1 administrative law judge of the commission; and the administrative
2 law judge assigned to the proceeding. The commission shall, by
3 rule, explicitly ban both of the following:

4 (A) The practice of one-way ex parte communications from a
5 decisionmaker to an interested person.

6 (B) Any communication between an interested person and a
7 decisionmaker regarding which commissioner or administrative
8 law judge may be assigned to a matter before the commission.

9 (3) For adjudication cases, the rules shall provide that ex parte
10 communications shall be prohibited, as required by this article.
11 The rules shall provide that if an ex parte communication occurs
12 that is prohibited by this article, or if an ex parte communication
13 occurs in a ratesetting case, whether initiated by a decisionmaker
14 or an interested person, all of the following shall be required:

15 (A) The interested person shall report the communication within
16 three working days of the communication by filing a notice with
17 the commission that includes all the following:

18 (i) The date, time, and location of the communication, whether
19 the communication was oral or written, or a combination of both,
20 and the communication medium used.

21 (ii) The identity of the decisionmaker, the identity of the person
22 initiating the communication, and the identities of any other persons
23 present.

24 (iii) The topic of the communication, including applicable
25 proceeding numbers.

26 (iv) A ~~complete~~ *substantive* description of the interested person's
27 communication and its content.

28 (v) A copy of any written material or text used during the
29 communication.

30 (B) Any decisionmaker who participated in the communication
31 shall promptly log the ex parte communication by filing a notice
32 that includes all the following:

33 (i) The date, time, and location of the communication, whether
34 the communication was oral or written, or a combination of both,
35 and the communication medium used.

36 (ii) The identity of the interested person, the identity of the
37 person initiating the communication, and the identities of any other
38 persons present.

39 (iii) The topic of the communication, including any applicable
40 proceeding numbers.

1 (iv) A brief description of the communication.

2 (C) If the interested person who participated in the
3 communication has not timely submitted the notice required by
4 subparagraph (A), the decisionmaker shall refer the matter to the
5 attorney for the commission, and an assigned commissioner, by
6 ruling, shall order the interested person to submit the required
7 notice. The interested person shall be subject to any applicable
8 penalties for the initial violation and, if the interested person does
9 not submit the required notice within the time period specified in
10 the assigned commissioner's ruling, the interested person shall be
11 subject to continuing violations pursuant to ~~section~~ *Section* 2108.

12 (4) The requirements of paragraph (3) shall not apply to any
13 oral ex parte communication occurring at a meeting if all parties
14 are invited to participate and given not less than three working
15 days' notice.

16 (5) The commission shall not take any vote on a matter in which
17 a notice of a prohibited ex parte communication has been filed
18 pursuant to subparagraph (A) or (B) of paragraph (3) until all
19 parties to the proceeding have been provided a reasonable
20 opportunity to respond to the communication.

21 (6) If an ex parte communication is not disclosed as required
22 by this subdivision until after the commission has issued a decision
23 on the matter to which the communication pertained, a party not
24 participating in the communication may file a petition to rescind
25 or modify the decision. The party may seek a finding that the ex
26 parte communication significantly influenced the decision's process
27 or outcome as part of any petition to rescind or modify the decision.
28 The commission shall process the petition in accordance with the
29 commission's procedures for petitions for modification and shall
30 issue a decision on the petition no later than 180 days after the
31 filing of the petition.

32 (7) (A) Ex parte communications that occur at conferences and
33 that are within the scope of an adjudication or ratesetting
34 proceeding shall be subject to the requirements of this article.

35 (B) Ex parte communications that occur at conferences and that
36 are within the scope of a quasi-legislative proceeding shall be
37 governed by the ex parte communication disclosure requirements
38 developed by the commission.

39 (C) For purposes of this section, "ex parte communications that
40 occur at conferences" includes, but is not limited to,

1 communications in a private setting or during meals, entertainment
2 events, and tours, and informal discussions among conference
3 attendees.

4 (8) The commission shall render its decisions based on the *law*
5 *and on the* evidence in the record. Ex parte communications shall
6 not be a part of the evidentiary record of the proceedings.

7 (f) The commission may meet in a closed session to discuss
8 administrative matters so long as no collective consensus is reached
9 or vote taken on any matter requiring a vote of the commissioners.
10 The commission shall, by rule, adopt and publish a definition of
11 “administrative matters” for purposes of this section.

12 (g) The commission shall permit written comments received
13 from the public to be included in the record of its proceedings, but
14 the comments shall not be treated as evidence. The commission
15 shall provide parties to the proceeding a reasonable opportunity
16 to respond to any public comments included in the record of
17 proceedings.

18 (h) It is the intent of the Legislature that the commission, and
19 any entity or person seeking to influence actions taken by the
20 commission, shall be subject to all applicable ethical standards,
21 including any applicable obligations under the Political Reform
22 Act of 1974 (Title 9 (commencing with Section 81000) of the
23 Government Code), including, but not limited to, any applicable
24 lobbying obligations.

25 SEC. 3. Section 1701.2 of the Public Utilities Code is amended
26 to read:

27 1701.2. (a) ~~If~~ *This section shall apply to adjudication cases*
28 *only.*

29 (b) *If* the commission pursuant to subdivision (a) of Section
30 1701.1 has determined that an adjudication case requires a hearing,
31 the assigned commissioner or the assigned administrative law
32 judge shall hear the case in the manner described in the scoping
33 memo. The scoping memo shall designate whether the assigned
34 commissioner or the assigned administrative law judge shall preside
35 in the case.

36 ~~(b)~~

37 (c) The commission shall provide by rule for peremptory
38 challenges and challenges for cause of the administrative law judge.
39 Challenges for cause shall include, but not be limited to, financial
40 interests and prejudice. The rule shall provide that all parties are

1 entitled to one peremptory challenge of the assignment of the
2 administrative law judge in all cases. All parties are entitled to
3 unlimited peremptory challenges in any case in which the
4 administrative law judge has within the previous 12 months served
5 in any capacity in an advocacy position at the commission, been
6 employed by a regulated public utility, or has represented a party
7 or has been an interested person in the case.

8 (e)

9 (d) The assigned commissioner or the administrative law judge
10 shall prepare and file a decision setting forth recommendations,
11 findings, and conclusions. The decision shall be filed with the
12 commission and served upon all parties to the action or proceeding
13 without undue delay, not later than 60 days after the matter has
14 been submitted for decision. The decision of the assigned
15 commissioner or the administrative law judge shall become the
16 decision of the commission if no further action is taken within 30
17 days. Any party may appeal the decision to the commission,
18 provided that the appeal is made within 30 days of the issuance of
19 the decision. The commission may itself initiate a review of the
20 proposed decision on any grounds.

21 (d)

22 (e) The commission's decision shall be supported by findings
23 of fact on all issues material to the decision, and the findings of
24 fact shall be based on the record developed by the assigned
25 commissioner or the administrative law judge. A decision different
26 from that of the assigned commissioner or the administrative law
27 judge shall be accompanied by a written explanation of each of
28 the changes made to the decision.

29 (e)

30 (f) Notwithstanding Section 307, an officer, employee, or agent
31 of the commission that is personally involved in the prosecution
32 or in the supervision of the prosecution of an adjudication case
33 before the commission shall not participate in the decision of the
34 case or any factually related adjudicatory proceeding, including
35 participation in or advising the commission as to findings of fact,
36 conclusions of law, or orders. An officer, employee, or agent of
37 the commission that is personally involved in the prosecution or
38 in the supervision of the prosecution of an adjudication case may
39 participate in reaching a settlement of the case, but shall not
40 participate in the decision of the commission to accept or reject

1 the settlement, except as a witness or counsel in an open hearing
2 or a hearing closed pursuant to subdivision ~~(g)~~ (h). The Legislature
3 finds that the commission performs both prosecutorial and
4 adjudicatory functions in an adjudication case and declares its
5 intent that an officer, employee, or agent of the commission,
6 including its attorneys, may perform only one of those functions
7 in any adjudication case or factually related adjudicatory
8 proceeding.

9 ~~(f)~~

10 (g) (1) Ex parte communications shall be prohibited in
11 adjudication cases.

12 (2) Any oral or written communications concerning procedural
13 matters in adjudication cases between interested persons and
14 decisionmakers, except the assigned administrative law judge,
15 shall be prohibited.

16 ~~(g)~~

17 (h) Notwithstanding any other law, the commission may meet
18 in a closed hearing to consider the decision that is being appealed.
19 The vote on the appeal shall be in a public meeting and shall be
20 accompanied with an explanation of the appeal decision.

21 ~~(h)~~

22 (i) Adjudication cases shall be resolved within 12 months of
23 initiation unless the commission makes findings why that deadline
24 cannot be met and issues an order extending that deadline. In the
25 event that a rehearing of an adjudication case is granted, the parties
26 shall have an opportunity for final oral argument.

27 ~~(i)~~

28 (j) (1) The commission may determine that the respondent
29 lacks, or may lack, the ability to pay potential penalties, fines, or
30 restitution that may be ordered by the commission.

31 (2) If the commission determines that a respondent lacks, or
32 may lack, the ability to pay, the commission may order the
33 respondent to demonstrate, to the satisfaction of the commission,
34 sufficient ability to pay potential penalties, fines, or restitution that
35 may be ordered by the commission. The respondent shall
36 demonstrate the ability to pay, or make other financial
37 arrangements satisfactory to the commission, within seven days
38 of the commission commencing an adjudication case. The
39 commission may delegate to the attorney to the commission the

1 determination of whether a sufficient showing has been made by
2 the respondent of an ability to pay.

3 (3) Within seven days of the commission's determination of the
4 respondent's ability to pay potential penalties, fines, or restitution,
5 the respondent shall be entitled to an impartial review by an
6 administrative law judge of the sufficiency of the showing made
7 by the respondent of the respondent's ability to pay. The review
8 by an administrative law judge of the ability of the respondent to
9 pay shall become part of the record of the adjudication and is
10 subject to the commission's consideration in its order resolving
11 the adjudication case. The administrative law judge may enter
12 temporary orders modifying any financial requirement made of
13 the respondent pending the review by the administrative law judge.

14 (4) A respondent that is a public utility regulated under a rate
15 of return or rate of margin regulatory structure or that has gross
16 annual revenues of more than one hundred million dollars
17 (\$100,000,000) generated within California is presumed to be able
18 to pay potential penalties, fines, or restitution that may be ordered
19 by the commission, and, therefore, paragraphs (1) to (3), inclusive,
20 do not apply to that respondent.

21 SEC. 4. Section 1701.3 of the Public Utilities Code is amended
22 to read:

23 1701.3. (a) This section shall apply *only* to ~~all ratesetting cases~~
24 ~~except, cases, except~~, if the commission pursuant to Section 1701.1
25 has determined that a ratesetting case does not require a hearing,
26 the procedures prescribed by subdivisions (b), (d), (f), and (i) shall
27 not apply.

28 (b) The assigned commissioner shall determine prior to the first
29 hearing whether the commissioner or the assigned administrative
30 law judge shall be designated as the principal hearing officer. The
31 principal hearing officer shall be present for more than one-half
32 of the hearing days. The decision of the principal hearing officer
33 shall be the proposed decision.

34 (c) An alternate decision may be issued by the assigned
35 commissioner or the assigned administrative law judge who is not
36 the principal hearing officer. Any alternate decision may be filed
37 with the commission and served upon all parties to the proceeding
38 any time prior to issuance of a final decision by the commission,
39 consistent with the requirements of Section 311.

(d) The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at any closing arguments in the case.

(e) The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting.

(f) The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(g) The commission shall provide by rule for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been an interested person in the case.

(h) (1) Ex parte communications in ratesetting cases are subject to the disclosure requirements of this article. The commission, by order or ruling, may prohibit ex parte communications in a ratesetting case.

(2) Oral communications may be permitted by a decisionmaker if all parties are given not less than three working days' notice. No individual ex parte meetings shall be held during the three business days before the commission's scheduled vote on the decision.

(3) (A) If an ex parte communication meeting is granted to any party, all other parties, upon request, shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that opportunity at the time the request is granted.

(B) Subparagraph (A) shall not apply if the decisionmaker participating in the ex parte communication meeting is a member of the personal staff of a commissioner acting in a policy or legal advisory capacity and no other decisionmaker to whom subparagraph (A) applies is a participant.

1 (4) Written ex parte communications by any interested person
2 may be permitted if copies of the communication are transmitted
3 to all parties on the same day as the original communication.

4 (5) Written and oral ex parte communications shall not be part
5 of the evidentiary record of the proceeding.

6 (6) The commission may establish a period during which no
7 oral or written ex parte communications may be permitted and the
8 commission may meet in closed session during that period, which
9 shall not in any circumstance exceed 14 days. If the commission
10 holds the decision, it may permit ex parte communications during
11 the first half of the interval between the hold date and the date that
12 the decision is calendared for final decision. The commission may
13 meet in closed session for the second half of that interval.

14 (i) Any party has the right to present a final oral argument of
15 its case before the commission. Those requests shall be scheduled
16 in a timely manner. A quorum of the commission shall be present
17 for the final oral arguments.

18 (j) The commission may, in issuing its decision, adopt, modify,
19 or set aside the proposed decision or any part of the decision based
20 on evidence in the record. The final decision of the commission
21 shall be issued not later than 60 days after the issuance of the
22 proposed decision. Under extraordinary circumstances the
23 commission may extend this date for a reasonable period. The
24 60-day period shall be extended for 30 days if any alternate
25 decision is proposed pursuant to Section 311.

26 SEC. 5. Section 1701.4 of the Public Utilities Code is amended
27 to read:

28 1701.4. (a) ~~If~~ *This section shall apply only to quasi-legislative*
29 *cases, except, if the commission pursuant to Section 1701.1 has*
30 *determined that a quasi-legislative case requires does not require*
31 *a hearing, the procedures prescribed by subdivisions (b), (d), and*
32 *(e) shall be applicable. not apply.*

33 (b) The assigned administrative law judge and any assigned
34 technical advisory staff shall act as an assistant to the assigned
35 commissioner in quasi-legislative cases. The assigned
36 commissioner shall prepare the proposed rule or order with the
37 assistance of the administrative law judge and any assigned
38 technical advisory staff. The assigned commissioner shall present
39 the proposed rule or order to the full commission in a public

1 meeting. The report shall include the number of days of hearing
2 and the number of days that the commissioner was present.

3 (c) Ex parte communications in quasi-legislative proceedings
4 are permitted and not subject to the disclosure requirements of this
5 article, except when the commission, by order or ruling, determines
6 either of the following:

7 (1) That ex parte communications are subject to the disclosure
8 requirements of this article.

9 (2) That ex parte communications are prohibited and subject to
10 the disclosure requirements of this article.

11 (d) Any party has the right to present a final oral argument of
12 its case before the commission. Those requests shall be scheduled
13 in a timely manner. A quorum of the commission shall be present
14 for the final oral arguments.

15 (e) The commission may, in issuing its rule or order, adopt,
16 modify, or set aside the proposed decision or any part of the rule
17 or order. The final rule or order of the commission shall be issued
18 not later than 60 days after the issuance of the proposed rule or
19 order. Under extraordinary circumstances the commission may
20 extend this date for a reasonable period. The 60-day period shall
21 be extended for 30 days if any alternate rule or order is proposed
22 pursuant to Section 311.

23 (f) *No informality in the manner of taking testimony or evidence*
24 *shall invalidate any order, decision, or rule made, approved, or*
25 *confirmed by the commission in quasi-legislative cases.*

26 SEC. 6. Section 1701.5 of the Public Utilities Code is amended
27 to read:

28 1701.5. (a) Except as specified in subdivision (b), in a
29 ratesetting or quasi-legislative case, the commission shall resolve
30 the issues raised in the scoping memo within 18 months of the date
31 the proceeding is initiated, unless the commission makes a written
32 determination that the deadline cannot be met, including findings
33 as to the reason, and issues an order extending the deadline.

34 (b) Notwithstanding subdivision (a), the commission may
35 specify in a scoping memo a resolution date later than 18 months
36 from the date the proceeding is initiated, if that scoping memo
37 includes specific reasons for the necessity of a later date and the
38 commissioner assigned to the case approves the date.

39 SEC. 7. Section 1701.6 is added to the Public Utilities Code,
40 to read:

1 1701.6. (a) In addition to any penalty, fine, or other punishment
2 applicable pursuant to Chapter 11 (commencing with Section
3 2100), the commission may assess civil sanctions upon any entity
4 or person, other than a decisionmaker or employee of the
5 commission, who violates, fails to comply with, or procures, aids,
6 or abets any violation of, the ex parte communication requirements
7 of this article or those adopted by the commission pursuant to this
8 article. The civil sanctions may include civil penalties, adverse
9 consequences in commission proceedings, or other appropriate
10 commission orders directed at the entity, person, or both the entity
11 and person, committing the violation.

12 (b) (1) Except as provided in paragraph (2), a civil penalty
13 assessed shall not exceed fifty thousand dollars (\$50,000) per
14 violation. Each day of a continuing violation is a separate violation.
15 If the violation consists of engaging in a communication that is
16 prohibited by the ex parte communication requirements, each day
17 that the violation is not disclosed to the commission and to parties
18 of record in the formal proceeding in which the communication
19 occurred shall constitute a separate violation.

20 (2) If the entity or person may obtain, by violating the ex parte
21 communication requirements, financial benefits that exceed the
22 maximum amount of civil penalty allowable pursuant to paragraph
23 (1), the commission may impose a civil penalty up to the amount
24 of those financial benefits.

25 (c) Civil penalties assessed pursuant to subdivision (b) upon
26 entities whose rates are determined by the commission shall be in
27 the form of credits to the customers of that entity. Civil penalties
28 collected from other entities shall be deposited into the General
29 Fund.

30 (d) In determining the appropriate civil sanctions, the
31 commission shall consider the following factors:

32 (1) The severity of the violation.

33 (2) The conduct of the entity or person, including the level of
34 experience of the entity or person in participating in commission
35 proceedings and whether the entity or person knowingly violated
36 the ex parte communication requirements.

37 (3) The financial resources of the entity or person.

38 (4) The totality of the circumstances in furtherance of the public
39 interest.

SEC. 8. Section 1701.7 is added to the Public Utilities Code, to read:

1701.7. (a) The Attorney General may bring an enforcement action in superior court against a decisionmaker or employee of the commission who knowingly and willfully violates, fails to comply with, or procures, aids or abets any violation of, the ex parte communication requirements in this article or those adopted by the commission pursuant to this article.

(b) Notwithstanding Section 1759, in an enforcement action brought pursuant to this section, the court may grant appropriate relief, including disqualification of the decisionmaker from one or more proceedings and civil penalties as provided in Section 2111.

(c) In determining the appropriate relief, the court may consider the following factors:

- (1) The severity of the violation.
- (2) The conduct of the decisionmaker or employee.
- (3) The financial resources of the decisionmaker or employee.
- (4) The totality of the circumstances in furtherance of the public interest.

(d) The Attorney General may compromise the enforcement action subject to approval by the court.

(e) Civil penalties collected pursuant to this section shall be deposited into the Litigation Deposits Fund established pursuant to Article 9 (commencing with Section 16425) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.